



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,266	10/13/2005	Samuel I Stupp	NANO 107 US2 (NU 22092)	1005
62249	7590	02/03/2009	EXAMINER	
BENET GROUP LLC C/O INTELLEVATE P.O. BOX 52050 MINNEAPOLIS, MN 55402			LUKTON, DAVID	
			ART UNIT	PAPER NUMBER
			1654	
			MAIL DATE	DELIVERY MODE
			02/03/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,266	<b>Applicant(s)</b> STUPP ET AL.	
	<b>Examiner</b> DAVID LUKTON	<b>Art Unit</b> 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5-9,13-17,22-25 and 29-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,6-9,13,14,16,17,22-25,29-33,35 and 36 is/are allowed.
- 6) ☒ Claim(s) 5 and 15 is/are rejected.
- 7) ☒ Claim(s) 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Pursuant to the response filed 11/10/08, several claims have been amended. Claims 1, 5-9, 13-17, 22-25, 29-36 are now pending.

Claims 5 and 15 are now rejected, and claim 34 is objected to. Claims 1, 6-9, 13, 14, 16, 17, 22-25, 29-33, 35, 36 are characterized as allowable at the present time.



Claim 34 is objected to because of a typographical error. This claim recites the following:

“The micelle ... comprising a material chosen from the consisting of”

Presumably, the following is intended instead:

- - The micelle ... comprising a material chosen from the **group** consisting of - -



Claims 5 and 15 are rejected under 35 U.S.C. §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 5 is dependent on a cancelled claim (claim 2)
- Claim 15 recites (second-to-last line) “a therapeutic amount”. However, this renders the claim indefinite. The amount will depend on a variety of factors, but particularly on the objective of the treatment. For example, treating a patient suffering from Alzheimer’s disease will require a different amount of a drug than treating a patient afflicted with cancer. It would seem that, unless a specific disease or condition is recited, the phrase “therapeutic amount” should not be present.

Art Unit: 1654

Claim 15 is also indefinite as to whether the patient is in need of the treatment. In particular, the claim encompasses the possibility where the patient has no need for a drug at all, but at the same time, a “site on [the] patient” is itself in need of the treatment. This situation, however, does not seem to make a lot of sense.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached at (571)272-0562. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

/David Lukton/

Primary Examiner, Art Unit 1654